

BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
FRED C. **AND** DALE N. KLEMP )

Appearances:

For Appellants: James M. Murphy  
Attorney at Law

For Respondent: Peter S. Pierson  
Counsel

O P I N I O N

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protests of Fred C. and Dale N. Klemp against proposed assessments of additional **personal** income tax in the amounts of \$497.97, \$7,050.01, \$5,035.93, \$2,887.35 and \$246.18 for the years ended June 30, 1960, 1961, 1962, 1963 and 1964, respectively.

The **issue presented** is whether appellants were residents of California from November 1, 1959, through June 30, 1964, and thereby subject to tax on their entire taxable income irrespective of source.

Fred C. Klemp, hereafter referred to as appellant, was born in Chicago, Illinois. Both appellant and Mrs. Klemp lived in Chicago prior to their marriage in 1937, and they continued to live in Illinois.

For many years appellants' principal business activity consisted of the design, construction, **repair** and leasing of motor freight terminals. Seven such terminals, as well as a garage, were built in the Chicago "Loop" area. During most of the years on appeal appellants' principal business activities in Chicago centered

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around their wholly owned corporation, the Dale Oil Company. The company operated the truck terminals and a service station-restaurant complex. A manager was hired to conduct the day-to-day operations of the service station and restaurant. Mrs. Klemp, an electrical engineer, was an active participant in the business affairs.

Appellants sold the garage in January 1960. Their corporation, Dale Oil Company, was liquidated in 1963. Following the liquidation the Klemps continued to receive income from investments in mortgages on other terminals and from loans to truck operators. The last terminal which they owned, as well as the service station and restaurant, was sold in April 1965. Some repair work was performed on truck terminals during the entire period under consideration.

During World War II appellants lived in an apartment at their business location. In 1945 they built a house on a farm near Chicago and for several years lived in the apartment during the construction season and on the farm during the off season. The farm proved unprofitable and was gradually sold in segments, being completely disposed of in 1950. Thereafter, appellants moved into another apartment in Chicago, which they maintained for several years. They relinquished this permanent apartment in 1954 or 1955, and thereafter when in Illinois stayed in apartment-hotels, in apartments of friends, and occasionally with relatives.

Ever since their marriage appellants have traveled extensively. They have submitted the following schedule for the fiscal years ended June 30, 1938, through June 30, 1958:

<u>Fiscal Year</u>	<u>Days in California</u>	<u>Days in Illinois</u>	<u>Days Elsewhere</u>
1937-38		250	115
1938-39	30	215	120
1939-40		230	135
1940-41		245	120
1941-42		215	150
1942-43		200	165
1943-44	30	185	150

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<u>Fiscal Year</u>	<u>Days in California</u>	<u>Days in Illinois</u>	<u>Days Elsewhere</u>
1944-45		245 *	150 *
1945-46		275	90
1946-47	120	155	90
1947-48	30	185	150
1948-49		215	150
1949-50		185	180
1950-51	60 *	55 *	300 *
1951-52	60	35	270
1952-53	120	95	150
1953-54	65	90	210
1954-55	90	125	150
1955-56	150	95	120
1956-57	120	65	180
1957-58	120	90	155

\* Figures submitted exceed 365 days.

Respondent submitted the following schedule relative to appellant for the calendar years 1959 through 1964, inclusive:

<u>Calendar Year</u>	<u>Days in California</u>	<u>Days in Illinois</u>	<u>Days Elsewhere</u>
1959			
1960	116		
1961	171 164	98 97	152 103
1962	186	69	125
1963	159	21	158
1964		33	173
	172	25	169

Mrs. Klemp spent slightly more time in California and less in Illinois than her husband during the calendar years 1959, 1960 and 1961.

In 1955, appellants purchased a lot and built a home in Palm Springs, California, at a total cost of \$38,500. 'During the years under consideration, appellants' usual pattern was to spend most of the time from early October until the middle or end of April in Palm Springs, spending the Christmas holidays, however, in Hawaii and making occasional short intervening trips to Chicago and elsewhere. In April they would usually leave California and go to Chicago for about 10 days before departing for Europe for a 2 1/2- to 3-month vacation. Most of the time

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spent in Europe was in Baden-Baden, Germany. Sometime in July they would usually return to Chicago for another short stay and then journey to Hayden Lake, Idaho, where they would usually remain for approximately a month and a half. In mid-September they would usually leave Hayden Lake, spend about two weeks traveling, and arrive at Palm Springs in late September or early October.

Appellants are ardent golfers. Mrs. Klemp served as chairman of the Women's Golf Association at the Thunderbird Country Club in Palm Springs for a two-year term ending in February of 1963. Both appellants testified that the Thunderbird Country Club required that the members own a home and that for this reason the house was built in Palm Springs. When they were away from Palm Springs their house was cared for by golf club personnel.

During the years on appeal appellants maintained business offices in Chicago. Their investments and investment counselor were in Chicago. They maintained bank accounts in Chicago and a household bank account in California. Their closest relatives resided in Chicago. They were registered voters in Illinois. Appellant's federal tax returns were filed in Chicago and they were prepared by Chicago accountants. The Klemps were treated by doctors both in Palm Springs and Chicago but received most of their medical care in Illinois. Their wills were prepared in Illinois and were kept there. They had no business interests or real property other than the Palm Springs house in California.

Section 17014 of the Revenue and Taxation Code provides:

"Resident" includes:

(a) Every individual who is in this State for other than a temporary or transitory purpose.

Respondent's regulations provide:

Whether or not the purpose for which an individual is in this State will be considered temporary or transitory in character will depend to a large extent upon the facts and circumstances of each particular case. It

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can be stated generally, however, that if an individual . . . is here for a brief rest or vacation . . . he is in this State for temporary or transitory purposes, and will not be a resident by virtue of his presence here.

If, however, an individual is in this State to improve his health and his illness is of such a character as to require a relatively long or indefinite period to recuperate, or has retired from business and moved to California with no definite intention of leaving shortly thereafter, he is in the State for other than temporary or transitory purposes, and, accordingly, is a resident taxable upon his entire net income even though he may retain his domicile in some other state or country.

\* \* \*

The underlying theory ... is that the state with which a person has the closest connection during the taxable year is the state of his residence.... (Cal. Admin. Code, tit. 18, reg. 17014-17016(b).)

Appellants contend that they were merely spending winter vacations in this state, continuing a pattern of living maintained for many years whereby seasonal vacations were spent at places other than Illinois. They explain that in view of their extensive traveling they saved money by not maintaining a house or a permanent apartment in Illinois. Appellants maintain that they traveled extensively to escape from the pressures of business which involved long hours during parts of the year followed by slack periods. Appellant points out that he had a heart murmur and that travel was beneficial to his health. In claiming Illinois residency, appellants also rely on their business activity and longtime connections in that state, including the personal and social ties there.

The language of section 17014 of the Revenue and Taxation Code was designed "to insure that all those who are in California for other than a temporary or transitory purpose enjoying the benefits and protection of the state, should in return contribute to the support

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of the state." (Whittell v. Franchise Tax Board, 231 Cal. App. 2d 278, 285 [41 Cal. Rptr. 673]; Cal. Admin. Code, tit. 18, reg. 17014-17016(a).)

The concept of residency should not be confused with the concept of domicile. The former denotes any factual place of abode of some permanency; that is, more than a temporary sojourn. (Whittell v. Franchise Tax Board, *supra*.) The latter, on the other hand, has been defined as the place where an individual has his true, fixed, permanent home and to which place, whenever he is absent, he has the intention of returning. (Cal. Admin. Code, tit. 18, reg. 17014-17016(c).) Accordingly, a person may be a resident of California for income tax purposes although he is not domiciled here and vice versa. (Whittell v. Franchise Tax Board, *supra*; Appeal of Marvella J. Currier, Cal. St. Bd. of Equal., Jan. 6, 1969; Cal. Admin. Code, tit. 18, reg. 17014-17016(a).) Some of the elements upon which appellants rely, e.g., that wills were made and kept in Illinois, that federal income tax returns were filed there and that appellants are registered to vote there, are more persuasive of domicile than residency. (See, for example, the third paragraph of Cal. Admin. Code, tit. 18, reg. 17014-17016(f) subd. (1).)

It is proper to consider previous years for evidence of a changing pattern although only the period November 1, 1959, through June 1964, is in controversy. (Appeal of Theodore W. and Mary A. Manthei, Cal. St. Bd. of Equal., Jan. 8, 1968; Appeal of Marcellus L. Joslyn, Cal. St. Bd. of Equal., Sept. 15, 1958.) The Klemps spent considerable time outside Illinois after their marriage, and their Illinois residency was not questioned with respect to prior years. Through the fiscal year ended June 30, 1950, time spent outside Illinois varied from a minimum of 90 days to a maximum of 180 days for each fiscal year. However, during each of those years more time was spent in Illinois than any other place. An examination of the schedule furnished by appellants reveals a sharp change in the time pattern after the complete disposition of the farm in 1950, namely a sharp decline with respect to the amount of time spent in Illinois as contrasted with elsewhere. It is also particularly significant that more time was spent in California than in Illinois every year after the house was built in Palm Springs, California. Furthermore, appellants spent far more time in California than in any other state, including Illinois/ during the years under consideration. In 1962 they spent nearly nine times as much time; 1963, nearly five times, and in

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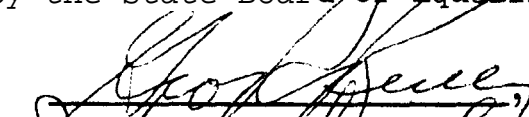
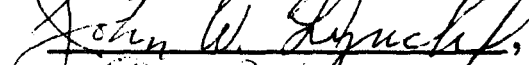


1964, nearly seven times as much time in California as they did in Illinois. The changing time pattern, and the accompanying surrounding circumstances, i.e., disposition of the Illinois farm, relinquishment of the permanent Illinois apartment, and the building of the California home, plus the lessening of the business activity in Illinois during the appeal years, indicate that the California visits were no longer temporary vacationing sojourns to escape business pressures. The foregoing factors indicate that California had become the place with which appellants were most closely connected. While some ties remained in Illinois, they were not as significant. Accordingly, we conclude that appellants were residents of this state during the years under consideration.

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protests of Fred C. and Dale N. Klemp against proposed assessments of additional personal income tax in the amounts of \$497.97, \$7,050.01, \$5,035.93, \$2,887.35, and \$246.18 for the years ended June 30, 1960, 1961, 1962, 1963 and 1964, respectively, be and the same is hereby sustained.

Done, at Sacramento, California, this 6th day of November, 1970, by the State Board of Equalization.

 \_\_\_\_\_, Chairman  
 \_\_\_\_\_, Member  
 \_\_\_\_\_, Member  
 \_\_\_\_\_, Member  
\_\_\_\_\_, Member

ATTEST:  \_\_\_\_\_, Secretary

